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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. [redacted]60

CITY OF CHICAGO, a Municipal Corporation,

Respondent,

v.

DICK GREGORY, et al.,

Petitioners.

REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

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REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I. The Protected Conduct in Logan Valley Plaza Would Not Have Been Subject to Sanction If the Shopping Center Occupants Had Turned Violence on the Pickets. The Same Applies Here.

The shopping center case, *Amalgamated Food Employees* v. *Logan Valley Plaza, Inc.*, ... U.S. ....., (36 Law Week 4385, May 20, 1968), holds demonstrations unaccompanied by threat or violence to be protected First Amend-

ment activity (at pp. 4385, 4388). In that case the pickets entered the area of the shopping center, an area the Court held to be open to the public at large, and peacefully displayed their contentions against the super market operator. The Court held that the pickets were not subject to injunction or other sanction (at p. 4388). Would the decision change if the super market's employees, customers or others using the center, had besieged the peaceful pickets, hailed them with invective, epithets, eggs and rocks? Would this illegal conduct make the peaceful actions of the pickets illegal? It is absurd to say yes, but this is the position of the City in this case.

The City concedes the only violence was by the spectators, and that this was merely done because of the presence of the demonstrators in the neighborhood.

The demonstrators were peaceful.

First, the City concedes that the record shows that the defendant demonstrators were peaceful, and the only activity the City complains of here occurred under police surveillance, either hours before the arrest (at Buckingham Fountain, miles away from the Mayor's house) or near the eventual scene of the arrest (where the same signs were carried and songs chanted as at the Fountain), and the City agrees that pursuant to police order, no demonstrator raised his voice, sang, or chanted after 8:20 p.m. (see City Brief, pp. 2-3, 7).(*) This distinguishes

(*) Most of the conduct referred to by the City occurred in the afternoon, at the Fountain, when police and prosecutors were present. The same police and prosecutors were present when the demonstrators marched some six or seven miles. At the scene the police permitted the marchers to continue, and set out their route. At the police request, the marchers were silent after 8:20 p.m. There were no new signs or symbols added after arriving at the scene. The Mayor was never present.

Turner, (City Brief, p. 4). In *Turner* the Court held the demonstrators changed their conduct from speech to obstruction. In the present case defendants continued their speech but made it silent. They never obstructed.

The demonstrators remained in the public way.

The City also concedes that the record shows that the demonstrators limited their march to the public sidewalk and to that portion of the sidewalk designated for them by the police.

It was the hecklers who were violent.

Further, the City concedes that the invective threat and violence were by the crowd, it was the crowd that was unruly, and that except for their presence, the demonstrators gave the members of the crowd no cause for their conduct (Brief, pp. 2-3, 7).

The City's position is therefore that the hecklers here have the right to veto, even without obstruction by the demonstrators, but does so in the face of *Brown* (Pet. Br., p. 8). The City, however, attempts to blur this issue by phrasing this case as a refusal to obey a police order to disperse, but that is not the charge. The City also attempts to avoid *Brown,* claiming that the police were excused from attempting to arrest the hecklers, but the record shows that no attempt to arrest was made.

The neighborhood involved is not private property; The crowd voluntarily gathered there.

The City attempts to distinguish *Terminiello* (Brief, p. 8) claiming that defendants "invaded" the Mayor's neighborhood and that the violent hecklers were a "captive

audience". This argument fails as the *Logan* super market case establishes that such "invasion" by pickets or demonstrators, even of a shopping center (*a fortiori* an entire section of the city) does not remove them from First Amendment protection, and the record shows that the hecklers were not "captive" (The defendants' demonstration was essentially silent and no onlooker was required to stay c.f. *Saia* v. *New York*, 334 U.S. 558, at 562), and this is not a basis for terminating defendants' protected demonstration under a general disorderly conduct ordinance.

The demonstrators did not use invective or incite violence.

The City seeks to have this Court extend *Feiner* beyond its limited holding (pp. 6, 7), "and to convict a speaker whenever the crowd turns hostile, even where the speaker fails to exceed" the bounds of argument or persuasion and undertakes incitement to riot. None of this occurred in this case and defendants' acquiescence to the arrest (Brief p. 3) does not validate the arrest or establish any basis for the conviction.

The City establishes that the ordinance is vague: The decision of when a violation occurs is left to the police.

The City totally ignores the vagueness of the ordinance, but by basing its argument upon the demonstrators' refusal to obey a request by police to disperse as a basis to uphold the decision below, the City by definition seeks a decision making the question of when the ordinance is violated to be left to the policeman—to be made on the spot—and thus the ordinance is void for vagueness. (Pet. Br., p. 9)

The City concedes that the vagueness issue is not moot and the Landry decision does not affect the convictions in this case.

The City obliquely suggests (Br., pp. 8-9) that the vagueness issue may be moot because of the decision of the District Court in *Landry* v. *Daley,* but removes any chance of moctness by noting that it is appealing from the *Landry* decision.

Finally, the Court (Br., pp. 9-10) slurs over *Wolin,* ignoring its content, and the City asks the Court to ignore the harm caused by the instruction on the parade permit.

CONCLUSION.

For the reasons set out, the Court should grant review, strike down the "heckler's veto", and reverse the decision below.

Respectfully submitted,

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